

HOUSE BILL No. 1115

DIGEST OF INTRODUCED BILL

Citations Affected: IC 30-2; IC 34-30-2-129.8.

Synopsis: Total return unitrusts and uniform custodial trust act. Adds provisions allowing: (1) an income trust to be converted to a total return unitrust; and (2) a total return unitrust to be converted to an income trust. Adds other provisions governing total return unitrusts. Adopts the uniform custodial trust act. (The introduced version of this bill was prepared by the probate code study commission.)

Effective: July 1, 2003.

Kuzman, Foley

January 7, 2003, read first time and referred to Committee on Judiciary.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

HOUSE BILL No. 1115

A BILL FOR AN ACT to amend the Indiana Code concerning trusts and fiduciaries.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 30-2-8.6 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2003]:

4 **Chapter 8.6. Uniform Custodial Trust Act**

5 **Sec. 1. (a) This chapter applies to a transfer or declaration**
6 **creating a custodial trust that refers to this chapter if, at the time**
7 **of the transfer or declaration:**

8 (1) the transferor, beneficiary, or custodial trustee:

9 (A) is a resident of; or

10 (B) has its principal place of business in Indiana; or

11 (2) custodial trust property is located in Indiana.

12 **(b) The custodial trust remains subject to this chapter even if**
13 **the transferor, beneficiary, or custodial trustee:**

14 (1) changes its residence or principal place of business; or

15 (2) removes custodial trust property;
16 **to a location outside Indiana.**

17 **Sec. 2. A transfer made pursuant to an act of another state**



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substantially similar to this chapter is governed by the law of that state and may be enforced in Indiana.

Sec. 3. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

Sec. 4. This chapter may be cited as the "Indiana Uniform Custodial Trust Act".

Sec. 5. As used in this chapter, "adult" means an individual who is at least eighteen (18) years of age.

Sec. 6. As used in this chapter, "beneficiary" means an individual for whom property:

- (1) has been transferred to; or
 - (2) is held under a declaration of trust by;
- a custodial trustee for the individual's use and benefit under this chapter.

Sec. 7. As used in this chapter, "custodial trust property" means the following:

- (1) An interest in property:
 - (A) transferred to; or
 - (B) held under a declaration of trust by;
 a custodial trustee under this chapter.
- (2) The income from and proceeds of the property interest described in subdivision (1).

Sec. 8. As used in this chapter, "custodial trustee" means a person designated as:

- (1) trustee; or
 - (2) substitute or successor to the person designated as trustee;
- of a custodial trust under this chapter.

Sec. 9. As used in this chapter, "guardian" has the meaning set forth in IC 29-3-1-6.

Sec. 10. As used in this chapter, "incapacitated" has the meaning set forth in IC 29-3-1-7.5.

Sec. 11. As used in this chapter, "legal representative" means a personal representative or guardian.

Sec. 12. As used in this chapter, "member of the beneficiary's family" means a beneficiary's spouse, descendant, stepchild, parent, stepparent, grandparent, brother, sister, uncle, or aunt, whether of whole or half blood or by adoption.

Sec. 13. As used in this chapter, "person" means an individual, corporation, business trust, estate, trust, partnership, joint venture, association, or any other legal or commercial entity.

Sec. 14. As used in this chapter, "personal representative" has

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the meaning set forth in IC 29-1-1-3.

Sec. 15. As used in this chapter, "state" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

Sec. 16. As used in this chapter, "transferor" means a person who creates a custodial trust by transfer or declaration.

Sec. 17. As used in this chapter, "trust company" means a financial institution, corporation, or other legal entity authorized to exercise general trust powers.

Sec. 18. (a) A person may create a custodial trust of property by a written transfer of the property to another person, evidenced by registration of the property or by an instrument of transfer that:

- (1) is executed in any lawful manner;
- (2) names an individual as beneficiary who may be the transferor; and
- (3) in substance, designates the transferee to be the custodial trustee of the property under this chapter.

(b) A person may create a custodial trust of property by a written declaration evidenced by registration of the property or by another instrument of declaration that:

- (1) is executed in any lawful manner;
- (2) describes the property;
- (3) names as beneficiary an individual other than the declarant; and
- (4) in substance, designates the declarant, who is also the titleholder of the property, to be the custodial trustee of the property under this chapter.

(c) A registration or other declaration of trust for the sole benefit of the declarant is not a custodial trust under this chapter.

(d) Title to custodial trust property is in the custodial trustee and the beneficial interest is in the beneficiary.

Sec. 19. (a) Except as provided in subsection (b), a transferor may not terminate a custodial trust.

(b) A custodial trust may be terminated by the beneficiary if the beneficiary is not incapacitated. In order to terminate the trust, the beneficiary must deliver to the custodial trustee a writing that:

- (1) is signed by the beneficiary; and
- (2) declares the termination of the custodial trust.

(c) If not previously terminated, a custodial trust terminates on the death of the beneficiary.

Sec. 20. A person may augment existing custodial trust property by the addition of other property under this chapter.

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1 **Sec. 21. The transferor may:**

2 (1) designate; or

3 (2) authorize the designation of;

4 a successor custodial trustee in the trust instrument.

5 **Sec. 22. (a) This chapter does not supersede or restrict other**
6 **means of creating trusts.**

7 **(b) A trust whose terms do not conform to this chapter may be**
8 **enforceable according to the terms of the trust under another law.**

9 **Sec. 23. (a) A person having the right to designate the recipient**
10 **of property payable or transferable upon a future event may create**
11 **a custodial trust upon the occurrence of the future event by**
12 **designating in writing the recipient, followed in substance by: "as**
13 **custodial trustee for _____ (name of beneficiary) under**
14 **the Indiana uniform custodial trust act".**

15 **(b) Persons may be designated as substitute or successor**
16 **custodial trustees to whom the property must be paid or**
17 **transferred in the order named if the first designated custodial**
18 **trustee is unable or unwilling to serve.**

19 **(c) A designation under this section may be made by:**

20 (1) making the designation in:

21 (A) a will;

22 (B) a trust;

23 (C) a deed;

24 (D) a multiple party account;

25 (E) an insurance policy;

26 (F) an instrument exercising a power of appointment; or

27 (G) a writing designating a beneficiary of contractual
28 rights; or

29 (2) registering the designation with or delivering the
30 designation to the fiduciary, payor, issuer, or obligor of the
31 future right.

32 **Sec. 24. (a) Obligations of a custodial trustee, including the**
33 **obligation to follow directions of the beneficiary, arise under this**
34 **chapter upon the custodial trustee's acceptance, express or implied,**
35 **of the custodial trust property.**

36 **(b) The custodial trustee's acceptance may be evidenced by a**
37 **writing stating in substance:**

38 **CUSTODIAL TRUSTEE'S RECEIPT AND ACCEPTANCE**

39 **I, _____ (name of custodial trustee) acknowledge**
40 **receipt of the custodial trust property described below or in the**
41 **attached instrument and accept the custodial trust as custodial**
42 **trustee for _____ (name of beneficiary) under the**

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1 Indiana uniform custodial trust act. I undertake to administer and
 2 distribute the custodial trust property under the Indiana uniform
 3 custodial trust act. My obligations as custodial trustee are subject
 4 to the directions of the beneficiary unless the beneficiary is
 5 designated as, is, or becomes incapacitated. The custodial trust
 6 property consists of _____.

7 Dated: _____

8
 9 (Signature of Custodial Trustee)

10 (c) Upon accepting custodial trust property, a person designated
 11 as custodial trustee under this chapter is subject to personal
 12 jurisdiction of the court with respect to any matter relating to the
 13 custodial trust.

14 Sec. 25. (a) Unless otherwise directed by an instrument
 15 designating a custodial trustee under section 23 of this chapter, a
 16 person, including a fiduciary other than a custodial trustee, who:

17 (1) holds property of; or

18 (2) owes a debt to;

19 an incapacitated individual may make a transfer to an adult
 20 member of the beneficiary's family or to a trust company as
 21 custodial trustee for the use and benefit of the incapacitated
 22 individual. If the value of the property or the debt exceeds twenty
 23 thousand dollars (\$20,000), the transfer is not effective unless
 24 authorized by the court.

25 (b) A written acknowledgment of delivery, signed by a custodial
 26 trustee, is a sufficient receipt and discharge for property
 27 transferred to the custodial trustee under this section.

28 Sec. 26. (a) Beneficial interests in a custodial trust created for
 29 multiple beneficiaries are considered to be separate custodial trusts
 30 of equal undivided interests for each beneficiary. Except in a
 31 transfer or declaration for use and benefit of husband and wife, for
 32 whom survivorship is presumed, a right of survivorship does not
 33 exist unless the instrument creating the custodial trust specifically
 34 provides for survivorship.

35 (b) Custodial trust property held under this chapter by the same
 36 custodial trustee for the use and benefit of the same beneficiary
 37 may be administered as a single custodial trust.

38 (c) A custodial trustee of custodial trust property held for at
 39 least two (2) beneficiaries shall separately account to each
 40 beneficiary under sections 27 and 35 of this chapter for the
 41 administration of the custodial trust.

42 (d) The custodial trust property or the income from the

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1 custodial trust property may not be subject to:

- 2 (1) anticipation;
- 3 (2) alienation;
- 4 (3) assignment;
- 5 (4) pledge;
- 6 (5) appointment; or
- 7 (6) any other voluntary or involuntary transfer;

8 before distribution by the custodial trustee. The custodial trustee
9 may disregard and defeat an attempt to violate the requirements
10 of this subsection.

11 Sec. 27. (a) If appropriate, a custodial trustee shall register or
12 record the instrument vesting title to custodial trust property.

13 (b) If the beneficiary is not incapacitated, a custodial trustee
14 shall follow the directions of the beneficiary in the management,
15 control, investment, or retention of the custodial trust property. In
16 the absence of effective contrary direction by the beneficiary while
17 not incapacitated, the custodial trustee shall observe the standard
18 of care that would be observed by a prudent person dealing with
19 property of another and is not limited by any other law restricting
20 investments by fiduciaries. However, a custodial trustee, in the
21 custodial trustee's discretion, may retain any custodial trust
22 property received from the transferor. If a custodial trustee has a
23 special skill or expertise or is named custodial trustee on the basis
24 of representation of a special skill or expertise, the custodial trustee
25 shall use that skill or expertise.

26 (c) Subject to subsection (b), a custodial trustee shall take
27 control of and collect, hold, manage, invest, and reinvest custodial
28 trust property.

29 (d) A custodial trustee at all times shall keep custodial trust
30 property of which the custodial trustee has control separate from
31 all other property in a manner sufficient to identify it clearly as
32 custodial trust property of the beneficiary. Custodial trust
33 property, the title to which is subject to recordation, is so identified
34 if an appropriate instrument identifying the property is recorded,
35 and custodial trust property subject to registration is identified if
36 it is registered, or held in an account in the name of the custodial
37 trustee, designated in substance: "as custodial trustee for
38 _____ (name of beneficiary) under the Indiana uniform
39 custodial trust act".

40 (e) A custodial trustee shall keep records of all transactions with
41 respect to custodial trust property, including information
42 necessary for the preparation of tax returns, and shall make the

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records and information available at reasonable times to the beneficiary or legal representative of the beneficiary.

(f) The exercise of a durable power of attorney for an incapacitated beneficiary is not effective to terminate or direct the administration or distribution of a custodial trust.

Sec. 28. (a) A custodial trustee acting in a fiduciary capacity has all the rights and powers over custodial trust property which an unmarried adult owner has over individually owned property, but a custodial trustee may exercise those rights and powers in a fiduciary capacity only.

(b) This section does not relieve a custodial trustee from liability for a violation of section 27 of this chapter.

Sec. 29. (a) If a beneficiary is not incapacitated, the custodial trustee shall:

(1) pay to the beneficiary; or

(2) expend for the beneficiary's use and benefit;

so much or all of the custodial trust property as the beneficiary may direct from time to time.

(b) If the beneficiary is incapacitated, the custodial trustee, in the custodial trustee's sole discretion, may expend so much or all of the custodial trust property as the custodial trustee considers advisable for the use and benefit of:

(1) the beneficiary; and

(2) individuals who:

(A) were supported by the beneficiary when the beneficiary became incapacitated; or

(B) are legally entitled to support by the beneficiary.

(c) The custodial trustee may make expenditures:

(1) in the manner;

(2) when; and

(3) to the extent;

that the custodial trustee determines suitable and proper. The custodial trustee may make expenditures without court order and without regard to other support, income, or property of the beneficiary.

(d) A custodial trustee may establish checking, savings, or other similar accounts of reasonable amounts under which:

(1) the custodial trustee; or

(2) the beneficiary;

may withdraw funds from, or draw checks against, the accounts. Funds withdrawn from, or checks written against, the account by the beneficiary are distributions of custodial trust property by the

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1 custodial trustee to the beneficiary.

2 **Sec. 30. (a) The custodial trustee shall administer the custodial**
 3 **trust as for an incapacitated beneficiary if:**

4 (1) the custodial trust was created under section 25 of this
 5 chapter;

6 (2) the transferor has so directed in the instrument creating
 7 the custodial trust; or

8 (3) the custodial trustee has determined that the beneficiary
 9 is incapacitated.

10 **(b) A custodial trustee may determine that the beneficiary is**
 11 **incapacitated in reliance upon:**

12 (1) previous direction or authority given by the beneficiary
 13 while not incapacitated, including direction or authority
 14 under a durable power of attorney;

15 (2) the certificate of the beneficiary's physician; or

16 (3) other persuasive evidence.

17 **(c) If a custodial trustee for an incapacitated beneficiary**
 18 **reasonably concludes that:**

19 (1) the beneficiary's incapacity has ceased; or

20 (2) circumstances concerning the beneficiary's ability to
 21 manage property and business affairs have changed since the
 22 creation of a custodial trust directing administration as for an
 23 incapacitated beneficiary;

24 **the custodial trustee may administer the trust as for a beneficiary**
 25 **who is not incapacitated.**

26 **(d) Upon the petition of:**

27 (1) the beneficiary;

28 (2) the custodial trustee; or

29 (3) another person interested in:

30 (A) the custodial trust property; or

31 (B) the welfare of the beneficiary;

32 **the court shall determine whether the beneficiary is incapacitated.**

33 **(e) If:**

34 (1) the custodial trustee or a court has not determined that a
 35 beneficiary is incapacitated under subsection (b) or (d); and

36 (2) the custodial trustee has reason to believe that the
 37 beneficiary is incapacitated;

38 **the custodial trustee shall administer the custodial trust in**
 39 **accordance with the provisions of this chapter applicable to an**
 40 **incapacitated beneficiary.**

41 **(f) Incapacity of a beneficiary does not terminate:**

42 (1) the custodial trust;

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- (2) any designation of a successor custodial trustee;
- (3) rights or powers of the custodial trustee; or
- (4) any immunities of third persons acting on the instructions of the custodial trustee.

Sec. 31. (a) A third person in good faith and without a court order may act on instructions of, or otherwise deal with, a person purporting to:

- (1) make a transfer as; or
- (2) act in the capacity of;

a custodial trustee.

(b) In the absence of knowledge to the contrary, a third person described in subsection (a) is not responsible for determining:

- (1) the validity of the purported custodial trustee's designation;
- (2) the propriety of, or the authority under this chapter for, any action of the purported custodial trustee;
- (3) the validity or propriety of an instrument executed or instruction given under this chapter by:

(A) the person purporting to make a transfer or declaration; or

(B) the purported custodial trustee; or

- (4) the propriety of the application of property vested in the purported custodial trustee.

Sec. 32. (a) A claim based on:

- (1) a contract entered into by a custodial trustee acting in a fiduciary capacity;
- (2) an obligation arising from the ownership or control of custodial trust property; or
- (3) a tort committed in the course of administering the custodial trust;

may be asserted by a third person against the custodial trust property by proceeding against the custodial trustee in a fiduciary capacity, whether or not the custodial trustee or the beneficiary is personally liable.

(b) A custodial trustee is not personally liable to a third person on a contract properly entered into in a fiduciary capacity unless the custodial trustee fails to:

- (1) reveal that capacity; or
- (2) identify the custodial trust in the contract.

(c) Unless a custodial trustee is personally at fault, a custodial trustee is not liable to a third person for:

- (1) an obligation arising from control of custodial trust

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property; or

(2) a tort committed in the course of the administration of the custodial trust.

(d) A beneficiary is not personally liable to a third person for:

(1) an obligation arising from beneficial ownership of custodial trust property; or

(2) a tort committed in the course of administration of the custodial trust;

unless the beneficiary is personally in possession of the custodial trust property giving rise to the liability or is personally at fault.

(e) Subsections (b) and (c) do not preclude actions or proceedings to establish liability of the custodial trustee or beneficiary to the extent the person sued is protected as the insured by liability insurance.

Sec. 33. (a) Before accepting the custodial trust property, a person designated as custodial trustee may decline to serve as custodial trustee by notifying:

(1) the person who made the designation;

(2) the transferor; or

(3) the transferor's legal representative.

(b) If the person designated to serve as custodial trustee declines to serve under subsection (a), and an event giving rise to a transfer has not occurred:

(1) the substitute custodial trustee designated under section 23 of this chapter becomes the custodial trustee; or

(2) if a substitute custodial trustee has not been designated:

(A) the person who made the designation may designate a substitute custodial trustee under section 23 of this chapter; or

(B) the transferor or the transferor's legal representative may designate a substitute custodial trustee.

(c) A custodial trustee who has accepted the custodial trust property may resign by:

(1) delivering written notice of resignation to:

(A) a successor custodial trustee, if any;

(B) the beneficiary; and

(C) if the beneficiary is incapacitated, the beneficiary's guardian, if any;

(2) transferring, registering, or recording an appropriate instrument relating to the custodial trust property in the name of the successor custodial trustee identified under subsection (d); and

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(3) delivering the records to the successor trustee identified under subsection (d).

(d) If a custodial trustee or successor custodial trustee is ineligible, resigns, dies, or becomes incapacitated, the successor designated under section 21 or 23 of this chapter becomes custodial trustee. If there is no effective provision for a successor:

(1) the beneficiary, if not incapacitated, may designate a successor custodial trustee; or

(2) if the beneficiary is incapacitated, or fails to act within ninety (90) days after the ineligibility, resignation, death, or incapacity of the custodial trustee:

(A) the beneficiary's guardian becomes successor custodial trustee; or

(B) if the beneficiary does not have a guardian or the guardian fails to act, the resigning custodial trustee may designate a successor custodial trustee.

(e) If a successor custodial trustee is not designated under subsection (d), any of the following may petition the court to designate a successor custodial trustee:

(1) The transferor.

(2) The legal representative of the transferor.

(3) The legal representative of the custodial trustee.

(4) An adult member of the beneficiary's family.

(5) The guardian of the beneficiary.

(6) A person interested in the custodial trust property.

(7) A person interested in the welfare of the beneficiary.

(f) A custodial trustee who declines to serve or resigns, or the legal representative of a deceased or incapacitated custodial trustee, as soon as practicable, shall put the custodial trust property and records in the possession and control of the successor custodial trustee. The successor custodial trustee may enforce the obligation to deliver custodial trust property and records and becomes responsible for each item as received.

(g) A beneficiary, an adult member of the beneficiary's family, a guardian of the person of the beneficiary, a person interested in the custodial trust property, or a person interested in the welfare of the beneficiary, may petition the court:

(1) to remove the custodial trustee for cause and designate a successor custodial trustee;

(2) to require the custodial trustee to furnish a bond or other security for the faithful performance of fiduciary duties; or

(3) for other appropriate relief.



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1 **Sec. 34. Except as otherwise provided in the instrument creating**
 2 **the custodial trust, in an agreement with the beneficiary, or by**
 3 **court order, a custodial trustee:**

4 **(1) is entitled to reimbursement from custodial trust property**
 5 **for reasonable expenses incurred in the performance of**
 6 **fiduciary services;**

7 **(2) has a noncumulative election, to be made not later than six**
 8 **(6) months after the end of each calendar year, to charge a**
 9 **reasonable compensation for fiduciary services performed**
 10 **during that year; and**

11 **(3) need not furnish a bond or other security for the faithful**
 12 **performance of fiduciary duties.**

13 **Sec. 35. (a) Upon the acceptance of custodial trust property, the**
 14 **custodial trustee shall provide a written statement describing the**
 15 **custodial trust property. The custodial trustee shall provide a**
 16 **written statement of the administration of the custodial trust**
 17 **property:**

18 **(1) once each year;**

19 **(2) upon request at reasonable times by the beneficiary or the**
 20 **beneficiary's legal representative;**

21 **(3) upon resignation or removal of the custodial trustee; and**

22 **(4) upon termination of the custodial trust.**

23 **The statements described by this section must be provided to the**
 24 **beneficiary or to the beneficiary's legal representative, if any. Upon**
 25 **termination of the beneficiary's interest, the custodial trustee shall**
 26 **furnish a current statement to the person to whom the custodial**
 27 **trust property is to be delivered.**

28 **(b) The following may petition the court for an accounting by**
 29 **the custodial trustee or the custodial trustee's legal representative:**

30 **(1) A beneficiary.**

31 **(2) The beneficiary's legal representative.**

32 **(3) An adult member of the beneficiary's family.**

33 **(4) A person interested in the custodial trust property.**

34 **(5) A person interested in the welfare of the beneficiary.**

35 **(c) A successor custodial trustee may petition the court for an**
 36 **accounting by a predecessor custodial trustee.**

37 **(d) In an action or proceeding under this chapter or in any other**
 38 **proceeding, the court may require or permit the custodial trustee**
 39 **or the custodial trustee's legal representative to account. The**
 40 **custodial trustee or the custodial trustee's legal representative may**
 41 **petition the court for approval of final accounts.**

42 **(e) If a custodial trustee is removed, the court shall:**

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- (1) require an accounting;
- (2) order delivery of the custodial trust property and records to the successor custodial trustee; and
- (3) order the execution of all instruments required for transfer of the custodial trust property.

(f) On petition of the custodial trustee or any person who could petition for an accounting, the court, after notice to interested persons, may:

- (1) issue instructions to the custodial trustee;
- (2) review the propriety of the acts of a custodial trustee; or
- (3) review the reasonableness of compensation determined by the custodial trustee for the services of the custodial trustee or others.

Sec. 36. (a) Except as provided in subsection (c), and unless previously barred by adjudication, consent, or limitation, a claim for relief against a custodial trustee for accounting or breach of duty is barred as to a beneficiary, a person to whom custodial trust property is to be paid or delivered, or the legal representative of an incapacitated or deceased beneficiary or payee:

- (1) who has received a final account or statement fully disclosing the matter, unless an action or proceeding to assert the claim is commenced not later than two (2) years after receipt of the final account or statement; or
- (2) who has not received a final account or statement fully disclosing the matter, unless an action or proceeding to assert the claim is commenced not later than three (3) years after the termination of the custodial trust.

(b) Except as provided in subsection (c), a claim for relief to recover from a custodial trustee for fraud, misrepresentation, or concealment related to the final settlement of the custodial trust or concealment of the existence of the custodial trust is barred unless an action or proceeding to assert the claim is commenced not later than five (5) years after the termination of the custodial trust.

(c) The limitations on a claim for relief are as follows:

- (1) If the claimant is a minor, the claim is barred unless an action or proceeding to assert the claim is commenced before the earlier of the following:
 - (A) Two (2) years after the claimant becomes an adult.
 - (B) Two (2) years after the claimant dies.
- (2) If the claimant is an incapacitated adult, the claim is barred unless an action or proceeding to assert the claim is commenced before the earliest of the following:



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(A) Two (2) years after the appointment of a guardian for claimant.

(B) Two (2) years after the removal of the incapacity.

(C) Two (2) years after the death of the claimant.

(3) If the claimant:

(A) was an adult;

(B) is deceased; and

(C) was not incapacitated;

the claim is barred unless an action or proceeding to assert the claim is commenced not later than two (2) years after the claimant's death.

Sec. 37. (a) Upon termination of a custodial trust, the custodial trustee shall transfer the unexpended custodial trust property:

(1) to the beneficiary, if not incapacitated or deceased;

(2) to the guardian or other recipient designated by the court for an incapacitated beneficiary; or

(3) upon the beneficiary's death, in the following order:

(A) as last directed in a writing:

(i) signed by the deceased beneficiary while not incapacitated; and

(ii) received by the custodial trustee during the life of the deceased beneficiary;

(B) to the survivor of multiple beneficiaries if survivorship is provided for under section 26 of this chapter;

(C) as designated in the instrument creating the custodial trust; or

(D) to the estate of the deceased beneficiary.

(b) If, when the custodial trust would otherwise terminate, the distributee is incapacitated, the custodial trust continues for the use and benefit of the distributee as beneficiary until the incapacity is removed or the custodial trust is otherwise terminated.

(c) Death of a beneficiary does not terminate the power of the custodial trustee to discharge obligations of the custodial trustee or beneficiary incurred before the termination of the custodial trust.

Sec. 38. (a) If a transaction, including a declaration with respect to or a transfer of specific property, otherwise satisfies applicable law, the criteria of section 18 of this chapter are satisfied by either of the following:

(1) The execution and either delivery to the custodial trustee or recording of an instrument in substantially the following form:

TRANSFER UNDER THE



INDIANA UNIFORM CUSTODIAL TRUST ACT

I, _____ (name of transferor or name and representative capacity if a fiduciary), transfer to _____ (name of trustee other than transferor), as custodial trustee for _____ (name of beneficiary) as beneficiary and _____ as distributee on termination of the trust in absence of direction by the beneficiary under the Indiana uniform custodial trust act, the following: (insert a description of the custodial trust property legally sufficient to identify and transfer each item of property).

Dated: _____

(Signature)

(2) The execution and the recording or giving notice of its execution to the beneficiary of an instrument in substantially the following form:

DECLARATION OF TRUST UNDER THE INDIANA UNIFORM CUSTODIAL TRUST ACT

I, _____ (name of owner of property), declare that henceforth I hold as custodial trustee for _____ (name of beneficiary other than transferor) as beneficiary and _____ as distributee on termination of the trust in absence of direction by the beneficiary under the Indiana uniform custodial trust act, the following: (Insert a description of the custodial trust property legally sufficient to identify and transfer each item of property).

Dated: _____

(Signature)

(b) Customary methods of transferring or evidencing ownership of property may be used to create a custodial trust, including any of the following:

(1) Registration of a security in the name of:

(A) a trust company;

(B) an adult other than the transferor; or

(C) the transferor if the beneficiary is other than the transferor;

designated in substance "as custodial trustee for _____ (name of beneficiary) under the Indiana uniform custodial trust act".

(2) Delivery of:

(A) a certificated security, or a document necessary for the

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- 1 transfer of an uncertificated security; and
 2 (B) any necessary endorsement;
 3 to an adult other than the transferor or to a trust company as
 4 custodial trustee, accompanied by an instrument in
 5 substantially the form prescribed in subsection (a)(1).
 6 (3) Payment of money or transfer of a security held in the
 7 name of a broker or a financial institution or its nominee to a
 8 broker or financial institution for credit to an account in the
 9 name of:
 10 (A) a trust company;
 11 (B) an adult other than the transferor; or
 12 (C) the transferor if the beneficiary is other than the
 13 transferor;
 14 designated in substance: "as custodial trustee for
 15 _____ (name of beneficiary) under the Indiana
 16 uniform custodial trust act".
 17 (4) Registration of ownership of a life or endowment
 18 insurance policy or annuity contract with the issuer in the
 19 name of:
 20 (A) a trust company;
 21 (B) an adult other than the transferor; or
 22 (C) the transferor if the beneficiary is other than the
 23 transferor;
 24 designated in substance: "as custodial trustee for
 25 _____ (name of beneficiary) under the Indiana
 26 uniform custodial trust act".
 27 (5) Delivery of a written assignment to:
 28 (A) an adult other than the transferor; or
 29 (B) a trust company;
 30 whose name in the assignment is designated in substance by
 31 the words: "as custodial trustee for _____ (name
 32 of beneficiary) under the Indiana uniform custodial trust
 33 act".
 34 (6) Irrevocable exercise of a power of appointment, pursuant
 35 to its terms, in favor of:
 36 (A) a trust company;
 37 (B) an adult other than the donee of the power; or
 38 (C) the donee who holds the power if the beneficiary is
 39 other than the donee;
 40 whose name in the appointment is designated in substance:
 41 "as custodial trustee for _____ (name of
 42 beneficiary) under the Indiana uniform custodial trust act".

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(7) Delivery of a written notification or assignment of a right to future payment under a contract to an obligor that transfers the right under the contract to:

(A) a trust company;

(B) an adult other than the transferor; or

(C) the transferor if the beneficiary is other than the transferor;

whose name in the notification or assignment is designated in substance: "as custodial trustee for _____ (name of beneficiary) under the Indiana uniform custodial trust act".

(8) Execution, delivery, and recordation of a conveyance of an interest in real property in the name of:

(A) a trust company;

(B) an adult other than the transferor; or

(C) the transferor if the beneficiary is other than the transferor;

designated in substance: "as custodial trustee for _____ (name of beneficiary) under the Indiana uniform custodial trust act".

(9) Issuance of a certificate of title by an agency of a state or of the United States that evidences title to tangible personal property:

(A) issued in the name of:

(i) a trust company;

(ii) an adult other than the transferor; or

(iii) the transferor if the beneficiary is other than the transferor;

designated in substance: "as custodial trustee for _____ (name of beneficiary) under the Indiana uniform custodial trust act"; or

(B) delivered to:

(i) a trust company; or

(ii) an adult other than the transferor or endorsed by the transferor to that person;

designated in substance: "as custodial trustee for _____ (name of beneficiary) under the Indiana uniform custodial trust act".

(10) Execution and delivery of an instrument of gift to:

(A) a trust company; or

(B) an adult other than the transferor;

designated in substance: "as custodial trustee for

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_____ (name of beneficiary) under the uniform
custodial trust act".

Sec. 39. The provisions of this chapter are severable in the
manner provided by IC 1-1-1-8(b).

SECTION 2. IC 30-2-15 IS ADDED TO THE INDIANA CODE AS
A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
1, 2003]:

Chapter 15. Total Return Unitrusts

Sec. 1. As used in this chapter, "current valuation year" means
the year of the trust for which the unitrust amount is being
determined.

Sec. 2. As used in this chapter, "income trust" means a trust
created by an inter vivos or a testamentary instrument that has
terms that describe the amount that may or must be distributed to
a beneficiary by referring to the trust's income.

Sec. 3. As used in this chapter, "net fair market value" means
the fair market value of each asset comprising the trust reduced by
the liens, debts, and encumbrances of the trust, regardless of
whether the liens, debts, and encumbrances are allocable to a
specific asset.

Sec. 4. As used in this chapter, "total return unitrust" means an
income trust that has been converted to a total return unitrust in
accordance with this chapter.

Sec. 5. As used in this chapter, "trustee" refers to the:

- (1) trustee of a trust; or
- (2) if at least two (2) persons are acting as trustee, a majority
of the trustees.

Sec. 6. As used in this chapter, "unitrust amount" means an
amount computed as a percentage of the fair market value of the
trust as set forth in this chapter.

Sec. 7. As used in this chapter, "unitrust rate" means the
percentage of the fair market value of the trust that is determined
under section 15 of this chapter and used to calculate the unitrust
amount.

Sec. 8. As used in this chapter, "year" means a calendar year.

Sec. 9. A trustee may:

- (1) release the trustee's power to adjust between trust
principal and income under IC 30-2-14-15 and convert an
income trust to a total return unitrust;
- (2) reconvert a total return unitrust to an income trust; or
- (3) change the unitrust rate;

if the requirements of this chapter are met.

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1 **Sec. 10. (a)** Unless expressly prohibited in the governing trust
 2 instrument, and if the trustee would not be prohibited from
 3 exercising the power to adjust under IC 30-2-14-15(a) because at
 4 least one (1) of the provisions of IC 30-2-14-15(c)(3) through
 5 IC 30-2-14-15(c)(7) would be applicable, a trustee may, without the
 6 approval of the court having jurisdiction of the trust, take an
 7 action set forth in section 9 of this chapter if:

8 (1) the trustee sends written notice of the trustee's proposed
 9 action to:

10 (A) the settlor of the trust, if the settlor is living; and

11 (B) the trust beneficiaries described in IC 30-2-14-16(b);
 12 and

13 (2) no person who receives a written notice under subdivision
 14 (1) objects to the proposed action.

15 (b) To the extent applicable, the notice must:

16 (1) state the trustee's intent to release the power to adjust
 17 under IC 30-2-14-15 and to convert the trust to a total return
 18 unitrust; and

19 (2) describe how the unitrust will operate and any decisions
 20 made by the trustee under this chapter.

21 In the notice, the trustee shall also specify an effective date of the
 22 conversion, reconversion, or change in the unitrust rate.

23 (c) A person who receives notice under subsection (a) of a
 24 trustee's proposed action may object to the proposed action by
 25 delivering a written objection to the trustee not later than sixty (60)
 26 days after receiving the notice.

27 **Sec. 11.** If a trustee:

28 (1) receives an objection under section 10 of this chapter;

29 (2) elects not to proceed under section 10 of this chapter; or

30 (3) is not able to proceed under section 10 of this chapter
 31 because the trustee does not have the power to adjust under
 32 IC 30-2-14-15(c)(5), IC 30-2-14-15(c)(6), or
 33 IC 30-2-14-15(c)(7);

34 the trustee may petition the court having jurisdiction of the trust
 35 for an order that allows the trustee to take an action described in
 36 section 9 of this chapter.

37 **Sec. 12.** A trust beneficiary described in IC 30-2-14-16(b) may
 38 petition the court having jurisdiction of the trust to order the
 39 trustee to take an action described in section 9 of this chapter, if
 40 the action would not alter any amount in the trust that is
 41 permanently set aside for charitable purposes unless both income
 42 and principal are set aside.



1 Sec. 13. If the court finds that the conversion, reconversion, or
2 change in the unitrust rate under this chapter will enable the
3 trustee to better carry out the intent of the settlor or testator and
4 the purposes of the trust, the court shall approve the conversion,
5 reconversion, or change in the unitrust rate under this chapter.

6 Sec. 14. This section applies if a total return unitrust is
7 reconverted to an income trust. The trustee's release of the
8 trustee's power under IC 30-2-14-15, if it was given at the time the
9 trust was converted to a total return unitrust, is void when the
10 trust is reconverted.

11 Sec. 15. (a) When a trustee gives notice of a proposed action
12 under section 10 of this chapter to convert a trust to a unitrust, the
13 trustee must include the unitrust rate in the notice of proposed
14 action.

15 (b) If:

16 (1) the trustee proposes a unitrust rate of four percent (4%)
17 in the notice of proposed action; and

18 (2) no beneficiary entitled to notice of the proposed action
19 makes a written objection to the unitrust rate under section
20 10 of this chapter;

21 the unitrust rate must be four percent (4%).

22 (c) A trust may have a unitrust rate that represents a reasonable
23 current return from the trust and best reflects the goals of the trust
24 and the intent of the settlor or testator, but that is not less than
25 three percent (3%) or more than five percent (5%), if the rate is:

26 (1) agreed upon in writing by the trustee and the beneficiaries
27 entitled to notice under section 11 of this chapter; or

28 (2) ordered by the court having jurisdiction of the trust.

29 Sec. 16. For the first two (2) years of the trust or the first two (2)
30 years after the conversion to a total return unitrust under this
31 chapter, the unitrust amount for a current valuation year of the
32 trust must be the product of the unitrust rate multiplied by the net
33 fair market values of the assets held in the trust on the first
34 business day of the current valuation year.

35 Sec. 17. Beginning with the third year of the trust, and each year
36 after that year, the unitrust amount for a current valuation year of
37 the trust is the product of the unitrust rate multiplied by the
38 average of the net fair market values of the assets held in the trust
39 on the first business day of:

40 (1) the current valuation year; and

41 (2) each of the two (2) years of the trust immediately
42 preceding the current valuation year.

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1 **Sec. 18. In determining the net fair market value of each asset**
 2 **held in the trust under sections 16 and 17 of this chapter, the value**
 3 **of the following may not be included:**

4 **(1) Any residential property or tangible personal property**
 5 **that, as of the first business day of the current valuation year,**
 6 **at least one (1) income beneficiary of the trust has or had the**
 7 **right to:**

8 **(A) occupy; or**

9 **(B) possess or control;**

10 **other than in a capacity as trustee. However, the right of**
 11 **occupancy or the right to possession or control shall be**
 12 **considered to be the unitrust amount with respect to the**
 13 **residential property or the tangible personal property.**

14 **(2) Any asset specifically given to a beneficiary under the**
 15 **terms of the trust and the return on that investment. The**
 16 **return on the investment shall be distributable to the**
 17 **beneficiary.**

18 **(3) Any assets that are held in a testator's estate.**

19 **Sec. 19. The trustee may exclude any assets for which the fair**
 20 **market value is not readily determinable from the determination**
 21 **of net fair market value of trust assets. However, the terms of the**
 22 **trust continue to apply to these assets.**

23 **Sec. 20. The unitrust amount may not be reduced for expenses**
 24 **that would be deducted from income if the trust were not a total**
 25 **return unitrust.**

26 **Sec. 21. For purposes of section 16 of this chapter, the net fair**
 27 **market values of the assets held in trust on the first business day of**
 28 **a proper valuation year shall be adjusted to reflect any:**

29 **(1) reduction, in the case of a distribution or payment; or**

30 **(2) increase, in the case of a receipt;**

31 **for the prior valuation year as if the distribution, payment, or**
 32 **receipt had occurred on the first day of the prior valuation year.**

33 **Sec. 22. (a) As used in this section, "short year" refers to a part**
 34 **of a calendar year that:**

35 **(1) begins when the interest of the current beneficiary or class**
 36 **of current beneficiaries begins; or**

37 **(2) ends when the interest of the current beneficiary or class**
 38 **of beneficiaries ends.**

39 **(b) The trustee shall prorate the unitrust amount on a daily**
 40 **basis in a short year.**

41 **Sec. 23. (a) This section applies to the following trusts:**

42 **(1) A trust for which a marital deduction has been taken for**

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1 federal tax purposes during the lifetime of the spouse for
 2 whom the trust was created under Section 2056 or 2523 of the
 3 Internal Revenue Code.

4 (2) A trust to which the generation-skipping transfer tax due
 5 under Section 2601 of the Internal Revenue Code does not
 6 apply by reason of any effective date or transition rule.

7 (b) To the extent necessary to satisfy a tax law requirement or
 8 to preserve a tax benefit, the unitrust amount may not be less than
 9 the net income of the trust. Net income of the trust shall be
 10 determined as if the trust were not a unitrust.

11 Sec. 24. After the income trust is converted to a total return
 12 unitrust under this chapter, both of the following apply:

13 (1) The term "income" in the governing instrument means the
 14 unitrust amount plus any income from the trust assets
 15 excluded from the determination of net fair market value
 16 under sections 18 and 19 of this chapter.

17 (2) The trustee shall make regular distributions in accordance
 18 with the governing instrument construed in accordance with
 19 this chapter.

20 Sec. 25. (a) Except as provided in subsection (b), and unless
 21 otherwise provided by the governing instrument, the unitrust
 22 amount shall be considered to have been paid from net income. The
 23 net income of the trust shall be determined as if the trust were not
 24 a unitrust.

25 (b) To the extent that:

26 (1) net income is insufficient to pay the unitrust amount, the
 27 unitrust amount shall be considered to have been paid from
 28 net realized short term capital gains;

29 (2) net income and net realized short term capital gains are
 30 insufficient to pay the unitrust amount, the unitrust amount
 31 shall be considered to have been paid from net realized long
 32 term capital gains; and

33 (3) net income and net realized short term and net long term
 34 capital gains are insufficient to pay the unitrust amount, the
 35 unitrust amount shall be considered to have been paid from
 36 the principal of the trust.

37 Sec. 26. (a) A trustee who in good faith acts or fails to act under
 38 section 9 of this chapter is not liable to any person affected by the
 39 action or inaction, regardless of whether the person:

40 (1) received written notice as provided in section 10 of this
 41 chapter; and

42 (2) was under legal disability at the time of the delivery of the

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1 **notice.**

2 **(b) The exclusive remedy of a person affected by the action or**
3 **inaction of a trustee is to obtain an order of the court having**
4 **jurisdiction of the trust that directs the trustee to take an action**
5 **described in section 9 of this chapter.**

6 SECTION 3. IC 34-30-2-129.8 IS ADDED TO THE INDIANA
7 CODE AS A NEW SECTION TO READ AS FOLLOWS
8 [EFFECTIVE JULY 1, 2003]: **Sec. 129.8. IC 30-2-15-26 (Concerning**
9 **actions of a trustee of a total return unitrust).**

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